

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Christopher Mills	Team: Team # 3	CCRB Case #: 201401528	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 02/15/2014 9:30 PM	Location of Incident: East 111th Street between 1st and 2nd Avenue	Precinct: 23	18 Mo. SOL 8/15/2015	EO SOL 8/15/2015	
Date/Time CV Reported Sat, 02/15/2014 9:44 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 02/18/2014 9:44 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Jonathan Virtuoso	27266	949774	023 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Michael Bellinger	01868	944358	023 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Jonathan Virtuoso	Abuse: PO Jonathan Virtuoso threatened to arrest § 87(2)(b)	
B.POM Jonathan Virtuoso	Discourtesy: PO Jonathan Virtuoso acted rudely toward § 87(2)(b)	

Case Summary

On February 15, 2014, § 87(2)(b) and § 87(2)(b) filed this complaint in person at the 23rd Precinct Stationhouse with Sgt. Christopher Ayau, who then reported the incident to the CCRB on their behalf, via the call processing system.

On February 15, 2014, at approximately 9:30 p.m., PO Michael Bellinger and PO Jonathan Virtuoso of the 23rd Precinct stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants. The following allegations resulted from this incident:

Allegation A – Abuse of Authority: PO Jonathan Virtuoso threatened to arrest § 87(2)(b)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation B – Discourtesy: PO Jonathan Virtuoso acted rudely toward § 87(2)(b)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) agreed to mediation as an alternative to resolve her complaint. However, on June 20, 2014, PO Virtuoso rejected the option, so the complaint was investigated instead.

Results of Investigation

Civilian Statements

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) is a 5'5" tall, 230 pound, black woman with black hair and brown eyes. She was § 87(2)(b) at the time of the incident.

CCRB Statement

§ 87(2)(b) provided a brief statement to Sgt. Ayau, who then reported it to the CCRB, during her initial complaint at the 23rd Precinct stationhouse on February 15, 2014. (Encl. 3a-3b) On March 3, 2014, she provided an additional statement via phone with Intake Investigator Jean Paul Lazoda. (Encl. 4b) On April 2, 2014, she provided a sworn statement at the CCRB. (Encl. 5a-5d) On November 19, 2014, she provided some additional details during a phone call from the undersigned investigator. § 87(2)(g)

On February 15, 2014, at approximately 9:30 p.m., § 87(2)(b) and § 87(2)(b) were driving in § 87(2)(b)'s stepfather's car. They were bringing food to a Boys and Girls Club event, and they had been looking for parking. § 87(2)(b) who was driving, stopped at a red light at the intersection of First Avenue and East 111th Street in Manhattan, put on her turn signal, and turned onto East 111th Street when the light turned green. A police car pulled her over.

The police car parked immediately behind her car, and two officers, identified via investigation as PO Michael Bellinger and PO Jonathan Virtuoso of the 23rd Precinct approached the vehicle. PO Virtuoso was described as a 5'11" tall, 230 pound, white man in his thirties or early forties, with black hair. PO Bellinger was described as a tall, slim, approximately 220 pound, white man, with light eyes, wearing a hat. PO Virtuoso approached § 87(2)(b)'s window, while PO Bellinger approached the other side of the vehicle, shining a flashlight inside at the back seat.

PO Virtuoso did not come all the way to § 87(2)(b)'s window, and stood back from it, tapping on the glass. She rolled down the window and turned on the light in her car. PO Virtuoso requested her license and registration, and she explained that the vehicle was her stepfather's, so she only had her license. PO Virtuoso asked her if her stepfather knew she had the vehicle, and she said that he did. She provided her license, and he took it back to his police car. While PO Virtuoso and PO Bellinger were in their car, § 87(2)(b) received a phone call from an unidentified woman at the Boys and Girls Club. The woman wanted to know where she was, and when the food would be there. § 87(2)(b) explained that she had been stopped by the police right outside, and the woman said that she would come and get the food.

§ 87(2)(b) agreed, and got out of her car. She opened the back door, removed the food, and set it out on the hood of her car. This took her approximately two minutes. Though she did not look at the officers, she thought it was clear that they were watching her, because they had to have seen her, since they were parked directly behind her. When the woman who had requested the food was across the street, PO Virtuoso began screaming for § 87(2)(b) to get back in her car or she would be arrested. § 87(2)(b) got back in her car. She did not know how much the woman was able to hear or see, since the area was crowded. They waited for another fifteen minutes, before PO Virtuoso returned with a summons.

PO Virtuoso again did not stand in front of her door. He stood slightly back, and § 87(2)(b) rolled down her window. PO Virtuoso then dismissively thrust the summons and her license inside, then walked away, without making any statements. § 87(2)(b) shouted back at him, asking why she was receiving the summons, and he waved his hand dismissively, shouting back "reckless driving" and "faulty brake lights."

§ 87(2)(b) did not believe she had committed any of the traffic infractions and immediately drove to the 23rd Precinct stationhouse to file a complaint.

Complainant/Witness: § 87(2)(b)

- § 87(2)(b) is a 5'11" tall, 280 pound, black man with brown hair. He was § 87(2)(b) at the time of the incident. He was working as an § 87(2)(b) at the time of the incident.

CCRB Statement

On April 2, 2014, he provided a sworn statement at the CCRB. (Encl. 7a-7d) § 87(2)(g)

PO Virtuoso threw § 87(2)(b)'s license, and a summons, at her, then walked away, without speaking.

NYPD Statements:

Subject Officer: PO JONATHAN VIRTUOSO

- PO Virtuoso is a 5'11" tall, 250 pound, white man with black hair and blue eyes. He was § 87(2)(b) years old at the time of the incident.
- PO Virtuoso worked from 3 p.m. to 11:35 p.m. with his partner, PO Bellinger, whom he could not recall at the time of his interview. They were in uniform and were assigned to sector patrol in a marked vehicle, number 4442.

Summons Number § 87(2)(b)

PO Virtuoso "observed § 87(2)(b) making multiple reckless traffic infractions, to wit: left turn without signal, lane change without signal, another lane change without signaling, a left

turn through a red light, also without signaling, and a defective break light (driver's side). (Encl. 11)

Memo Book

At 9:15 p.m. a car was stopped for reckless driving on 111th Street between First Avenue and Second Avenue. The driver, § 87(2)(b) was observed making a left turn from 110th Street on First Avenue without signaling, then changed lanes two times without signaling, and turned left without signaling while disobeying a red light. The vehicle, a 1998 Maxima, also had a defective third brake light, and a C summons was issued. (Encl. 7a-7d)

CCRB Statement

PO Virtuoso provided a sworn statement at the CCRB on October 17, 2014. (Encl. 8a-8b) The following is a summary of his statement.

PO Virtuoso saw § 87(2)(b) commit the traffic infractions listed in his memo book entries (above) and stopped her vehicle with the use of his turret lights. He approached her vehicle and requested her identification, which she provided, though she "had an attitude." PO Virtuoso did not recall what specifically she stated or did to lead him to that conclusion. He then returned to his vehicle to issue her a summons. When he did so, he told her to remain in her vehicle. However, while he was at his vehicle writing the summons, § 87(2)(b) exited her vehicle and went into the back seat.

PO Virtuoso got out of his car, but did not approach § 87(2)(b)'s vehicle. He did not know if PO Bellinger got out of the car too. PO Virtuoso was approximately fifteen feet away, and he stated "Miss, please get back in the car." PO Virtuoso believed she heard him." However, she ignored him, and he repeated the command.

§ 87(2)(b) continued to ignore him, and took a package and gave it to an unidentified woman. PO Virtuoso told § 87(2)(b) "Ma'am if you don't get back in the car right now, I'm placing you under arrest." He used his "command voice" which was a slightly louder, sterner voice. PO Virtuoso explained during his interview that he could have arrested her for the traffic violation for which she was being issued a summons. He told the undersigned investigator that he was doing her a favor by issuing a summons instead of arresting her, but did not intend to do so if she was not going to make him feel safe.

§ 87(2)(b) became defensive and agitated, though her behavior was otherwise calm, as though she was bothered by PO Virtuoso's statement. She told PO Virtuoso that the package she had given to the woman was a casserole.

PO Virtuoso issued a summons to § 87(2)(b) and then returned to his vehicle. He did not recall how he provided the summons to § 87(2)(b) or whether he threw it. PO Bellinger and § 87(2)(b)'s passenger did not participate in the incident. PO Virtuoso did not know who the other woman was, or how much of the incident she witnessed.

Witness Officer: PO MICHAEL BELLINGER

- *PO Bellinger is a 5'11" tall, 205 pound, black man with black hair and black eyes and sleeve-style tattoos.*
- *PO Bellinger worked from 3 p.m. to 11:35 p.m. on February 15, 2014, with his partner, PO Virtuoso. They were in RMP number 4442, in uniform, and assigned to precinct sector patrol.*

Memo Book

At 9:15 p.m. there was a car stop at 111th Street and First Avenue. A summons was issued and patrol was resumed at 9:30 p.m. (Encl. 9b-9c)

CCRB Statement

PO Bellinger provided a sworn statement at the CCRB on July 29, 2014. (Encl. 10a-10b) The following is a summary of his statement.

While they were in their vehicle an unidentified woman came out of a nearby building, and § 87(2)(b) exited her vehicle again. § 87(2)(b) went into the back seat of her car again, removed hot food, and gave it to the woman. § 87(2)(b) and the woman then began conversing.

For a second time, the officers exited their vehicle and told § 87(2)(b) to get back in her vehicle. PO Virtuoso approached her, while PO Bellinger again went to the passenger side of the car. PO Virtuoso told the unidentified woman to remain to the side until they were done, and told § 87(2)(b) to return to her vehicle again. § 87(2)(b) did so. PO Virtuoso then issued the summonses to her. He did not throw them at her.

§ 87(2)(b) asked what the summonses were for, and PO Virtuoso told her how to respond to them. The officers then returned to their vehicle and left.

Throughout the incident, PO Bellinger was on the right side of the car and could not hear much of the conversation. While he recalled hearing PO Virtuoso tell § 87(2)(b) to get back in her car, he did not recall hearing PO Virtuoso threatening to arrest § 87(2)(b).

Status of Civil Proceedings

- A Notice of Claim was requested on November 19, 2014 and the results will be added to the case file when they are received. (Encl.13a-13b)

Civilian's CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) (Encl. 2b)

Subject Officer's CCRB History

- PO Virtuoso has been a member of the service for four years and there are no substantiated CCRB allegations against him. (Encl. 2a)

Conclusion

Identification of Subject Officers

PO Virtuoso confirmed his involvement in the incident.

Investigative Findings and Recommendations

Allegation A – Abuse of Authority: PO Jonathan Virtuoso threatened to arrest § 87(2)(b)

It is undisputed that PO Virtuoso threatened to arrest § 87(2)(b) after she exited her vehicle during a traffic stop for reckless driving § 87(2)(g). § 87(2)(b) and § 87(2)(b) stated that after she had been at the back of her vehicle for approximately two minutes, retrieving food from the back seat, PO Virtuoso screamed that she should get back in the car or she would be arrested. PO Virtuoso stated that prior to using his “command voice” and threatening to arrest her, he initially stood at his own vehicle, which was approximately fifteen feet away, and told her to get back in her car, but she ignored him twice, though he believed she could hear him. PO Bellinger stated that § 87(2)(b) got out of her multiple times. Both officers contended that § 87(2)(b) was specifically told to stay in her car before she exited the vehicle.

Patrol Guide Procedure 208-01 states that an officer may arrest a person without a warrant if the officer has reasonable cause to believe an offense has been committed in his presence. (Encl. 1a) Section 195.05 of the New York State Penal Law states that a person is guilty of obstructing governmental administration when she intentionally obstructs, impairs, or perverts the administration of law or other governmental function, or attempts or attempts to prevent a public servant from performing an official function. (Encl. 1b)

§ 87(2)(g)

§ 87(2)(g)

Allegation B – Discourtesy: PO Jonathan Virtuoso acted rudely toward § 87(2)(b)

§ 87(2)(g) § 87(2)(b) stated that he shoved the documents into the car, whereas § 87(2)(b) stated that he threw the documents at her. PO Virtuoso did not recall doing so, and PO Bellinger stated that PO Virtuoso did not throw the documents.

§ 87(2)(g)

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date